

**To:** Sweeney, Stephen[Sweeney.Stephen@epa.gov]; Levy, Sandra (USANYE)[Sandra.Levy@usdoj.gov]  
**Cc:** Eckhardt, Cayleigh[eckhardt.cayleigh@epa.gov]; Stein, Mark[Stein.Mark@epa.gov]; Feinmark, Phyllis[Feinmark.Phyllis@epa.gov]  
**From:** Thorp, Michael (ENRD)  
**Sent:** Tue 11/29/2016 6:25:52 PM  
**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island Sound Dredged Material Disposal Site (privileged and confidential)

Good afternoon

I am free on Wednesday from 12:00-2:00 then again from 4:30-5:30. I am also available Thursday from 10:00-11:30.

-Mike

**From:** Sweeney, Stephen [mailto:Sweeney.Stephen@epa.gov]  
**Sent:** Monday, November 28, 2016 3:55 PM  
**To:** Levy, Sandra (USANYE) <Sandra.Levy@usdoj.gov>  
**Cc:** Eckhardt, Cayleigh <eckhardt.cayleigh@epa.gov>; Stein, Mark <Stein.Mark@epa.gov>; Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>; Thorp, Michael (ENRD) <MThorp@ENRD.USDOJ.GOV>  
**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island Sound Dredged Material Disposal Site (privileged and confidential)

Sandra,

I am available tomorrow (Tuesday) from 3-6. Wednesday from about 11:15 till 6pm. On Thursday from 9:30am to 12:30pm. And Friday all day.

Thanks,

Steve

**From:** Levy, Sandra (USANYE) [mailto:Sandra.Levy@usdoj.gov]

**Sent:** Monday, November 28, 2016 2:46 PM

**To:** Stein, Mark <Stein.Mark@epa.gov>; Sweeney, Stephen <Sweeney.Stephen@epa.gov>

**Cc:** Dierker, Carl <Dierker.Carl@epa.gov>; Eckhardt, Cayleigh <eckhardt.cayleigh@epa.gov>;  
Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>; Thorp, Michael (ENRD)  
<Michael.Thorp@usdoj.gov>

**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island  
Sound Dredged Material Disposal Site (privileged and confidential)

Hi, all,

**Non-responsive; Ex. 5 - Deliberative Process, Attorney-Client, Attorney Work-Product**

I have heard from Mark, Phyllis and Carl on their availability this week, and have compiled each of their responses into this trail. Steve, Cayleigh, and Mike, please advise of your availability as well, so that we can find a mutually convenient time

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Speaking of which, any further update on the timing of the FR publication? Thanks a lot.

Sandra L. Levy

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Chief of Environmental Litigation, Civil Division

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Please consider the environment before printing this e-mail.

**From:** Stein, Mark [<mailto:Stein.Mark@epa.gov>]

**Sent:** Wednesday, November 23, 2016 9:45 AM

**To:** Levy, Sandra (USANYE) <[SLevy@usa.doj.gov](mailto:SLevy@usa.doj.gov)>; Purdy, Angeline (ENRD) <[Angeline.Purdy@usdoj.gov](mailto:Angeline.Purdy@usdoj.gov)>; Sweeney, Stephen <[Sweeney.Stephen@epa.gov](mailto:Sweeney.Stephen@epa.gov)>

**Cc:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Eckhardt, Cayleigh <[eckhardt.cayleigh@epa.gov](mailto:eckhardt.cayleigh@epa.gov)>;  
Feinmark, Phyllis <[Feinmark.Phyllis@epa.gov](mailto:Feinmark.Phyllis@epa.gov)>

**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island Sound Dredged Material Disposal Site (privileged and confidential)

Sandra, et al. –

I am generally available next week (except Wednesday morning from 9:30-10:30). I do have

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With regard to a date for publication of the Final Rule, based on my call with the program office, we still don't have a date from the FR. The FR contacted our program person last Wednesday to say they had begun their review of the Rule. We were expecting to hear back from them again about a publication date for some time this week, perhaps as late as Friday, but they have not gotten back to us yet. I'll let you all know as soon as I hear something.

Mark A. Stein

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Email: [stein.mark@epa.gov](mailto:stein.mark@epa.gov)

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**From:** Sweeney, Stephen [<mailto:Sweeney.Stephen@epa.gov>]

**Sent:** Tuesday, November 22, 2016 5:35 PM

**To:** Feinmark, Phyllis <[Feinmark.Phyllis@epa.gov](mailto:Feinmark.Phyllis@epa.gov)>; Levy, Sandra (USANYE) <[SLevy@usa.doj.gov](mailto:SLevy@usa.doj.gov)>; Purdy, Angeline (ENRD) <[Angeline.Purdy@usdoj.gov](mailto:Angeline.Purdy@usdoj.gov)>; Stein, Mark <[Stein.Mark@epa.gov](mailto:Stein.Mark@epa.gov)>

**Cc:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Eckhardt, Cayleigh <[eckhardt.cayleigh@epa.gov](mailto:eckhardt.cayleigh@epa.gov)>

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I'm fairly open as well next week (heavier schedule on Tuesday and Thursday, but some of those I can get out of).

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[https://www.washingtonpost.com/lifestyle/style/the-electoral-college-isnt-a-real-place-but-someone-has-to-answer-its-phones-these-days/2016/11/16/816f3838-aaa7-11e6-977a-1030f822fc35\\_story.html?hpid=hp\\_rhp-top-table-main\\_electoral-college-830a%3Ahomepage%2Fstory](https://www.washingtonpost.com/lifestyle/style/the-electoral-college-isnt-a-real-place-but-someone-has-to-answer-its-phones-these-days/2016/11/16/816f3838-aaa7-11e6-977a-1030f822fc35_story.html?hpid=hp_rhp-top-table-main_electoral-college-830a%3Ahomepage%2Fstory)

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**From:** Feinmark, Phyllis [<mailto:Feinmark.Phyllis@epa.gov>]  
**Sent:** Tuesday, November 22, 2016 5:27 PM  
**To:** Levy, Sandra (USANYE) <[SLevy@usa.doj.gov](mailto:SLevy@usa.doj.gov)>; Purdy, Angeline (ENRD) <[Angeline.Purdy@usdoj.gov](mailto:Angeline.Purdy@usdoj.gov)>; Stein, Mark <[Stein.Mark@epa.gov](mailto:Stein.Mark@epa.gov)>; Sweeney, Stephen <[Sweeney.Stephen@epa.gov](mailto:Sweeney.Stephen@epa.gov)>  
**Cc:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Eckhardt, Cayleigh <[eckhardt.cayleigh@epa.gov](mailto:eckhardt.cayleigh@epa.gov)>  
**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island Sound Dredged Material Disposal Site (privileged and confidential)

Fine with me, Sandra. I am generally available next week. Happy Thanksgiving, all!

**From:** Levy, Sandra (USANYE) [<mailto:Sandra.Levy@usdoj.gov>]  
**Sent:** Tuesday, November 22, 2016 5:18 PM  
**To:** Purdy, Angeline (ENRD) <[Angeline.Purdy@usdoj.gov](mailto:Angeline.Purdy@usdoj.gov)>; Stein, Mark <[Stein.Mark@epa.gov](mailto:Stein.Mark@epa.gov)>; Sweeney, Stephen <[Sweeney.Stephen@epa.gov](mailto:Sweeney.Stephen@epa.gov)>  
**Cc:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Eckhardt, Cayleigh <[eckhardt.cayleigh@epa.gov](mailto:eckhardt.cayleigh@epa.gov)>; Feinmark, Phyllis <[Feinmark.Phyllis@epa.gov](mailto:Feinmark.Phyllis@epa.gov)>  
**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island Sound Dredged Material Disposal Site (privileged and confidential)

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If you agree and you plan to participate in the call, please advise of your availability next week. Thanks again and a very happy Thanksgiving to all.

Sandra L. Levy

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**From:** Levy, Sandra (USANYE)

**Sent:** Monday, November 21, 2016 5:51 PM

**To:** 'Purdy, Angeline (ENRD)' <[Angeline.Purdy@usdoj.gov](mailto:Angeline.Purdy@usdoj.gov)>; Stein, Mark  
<[Stein.Mark@epa.gov](mailto:Stein.Mark@epa.gov)>; Sweeney, Stephen <[Sweeney.Stephen@epa.gov](mailto:Sweeney.Stephen@epa.gov)>

**Cc:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Eckhardt, Cayleigh <[eckhardt.cayleigh@epa.gov](mailto:eckhardt.cayleigh@epa.gov)>;  
Phyllis Feinmark ([feinmark.phyllis@epa.gov](mailto:feinmark.phyllis@epa.gov)) <[feinmark.phyllis@epa.gov](mailto:feinmark.phyllis@epa.gov)>

**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island  
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Please consider the environment before printing this e-mail.

**From:** Purdy, Angeline (ENRD) [<mailto:Angeline.Purdy@usdoj.gov>]

**Sent:** Monday, November 21, 2016 10:55 AM

**To:** Levy, Sandra (USANYE) <[SLevy@usa.doj.gov](mailto:SLevy@usa.doj.gov)>; Stein, Mark <[Stein.Mark@epa.gov](mailto:Stein.Mark@epa.gov)>;  
Sweeney, Stephen <[Sweeney.Stephen@epa.gov](mailto:Sweeney.Stephen@epa.gov)>

**Cc:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Eckhardt, Cayleigh <[eckhardt.cayleigh@epa.gov](mailto:eckhardt.cayleigh@epa.gov)>;  
Phyllis Feinmark ([feinmark.phyllis@epa.gov](mailto:feinmark.phyllis@epa.gov)) <[feinmark.phyllis@epa.gov](mailto:feinmark.phyllis@epa.gov)>

**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island  
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**From:** Levy, Sandra (USANYE) [<mailto:Sandra.Levy@usdoj.gov>]

**Sent:** Monday, November 21, 2016 10:45 AM

**To:** Stein, Mark <[Stein.Mark@epa.gov](mailto:Stein.Mark@epa.gov)>; Sweeney, Stephen <[Sweeney.Stephen@epa.gov](mailto:Sweeney.Stephen@epa.gov)>;  
Purdy, Angeline (ENRD) <[APurdy@ENRD.USDOJ.GOV](mailto:APurdy@ENRD.USDOJ.GOV)>

**Cc:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Eckhardt, Cayleigh <[eckhardt.cayleigh@epa.gov](mailto:eckhardt.cayleigh@epa.gov)>;  
Phyllis Feinmark ([feinmark.phyllis@epa.gov](mailto:feinmark.phyllis@epa.gov)) <[feinmark.phyllis@epa.gov](mailto:feinmark.phyllis@epa.gov)>

**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island  
Sound Dredged Material Disposal Site (privileged and confidential)

(Adding Phyllis to this communication as well.) I am available tomorrow afternoon and Wednesday. For anyone else who would participate on this call, please indicate your availability as well. Thanks again, Mark.

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**From:** Stein, Mark [<mailto:Stein.Mark@epa.gov>]

**Sent:** Monday, November 21, 2016 7:30 AM

**To:** Levy, Sandra (USANYE) <[SLevy@usa.doj.gov](mailto:SLevy@usa.doj.gov)>; Sweeney, Stephen <[Sweeney.Stephen@epa.gov](mailto:Sweeney.Stephen@epa.gov)>; Purdy, Angeline (ENRD) <[Angeline.Purdy@usdoj.gov](mailto:Angeline.Purdy@usdoj.gov)>

**Cc:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Eckhardt, Cayleigh <[eckhardt.cayleigh@epa.gov](mailto:eckhardt.cayleigh@epa.gov)>

**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island Sound Dredged Material Disposal Site (privileged and confidential)

Hi Sandy –

I will be working Monday – Wednesday of this week. I expect to knock off a bit early on Wednesday and to take Friday off. Therefore, a call on Monday, Tuesday or the early side of Wednesday could work for me.



One more thing: I got a message from our program office this morning indicating that the FR did not give them the publication date heads-up they had expected to receive on Friday. Therefore, their best *guess* is that they will get that heads-up some time this week and publication will take place at the end of this week or early next week.

- Mark

Mark A. Stein

Senior Assistant Regional Counsel

EPA Region 1

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Email: [stein.mark@epa.gov](mailto:stein.mark@epa.gov)

**From:** Levy, Sandra (USANYE) [<mailto:Sandra.Levy@usdoj.gov>]

**Sent:** Friday, November 18, 2016 5:35 PM

**To:** Stein, Mark <[Stein.Mark@epa.gov](mailto:Stein.Mark@epa.gov)>; Sweeney, Stephen <[Sweeney.Stephen@epa.gov](mailto:Sweeney.Stephen@epa.gov)>; Purdy, Angeline (ENRD) <[Angeline.Purdy@usdoj.gov](mailto:Angeline.Purdy@usdoj.gov)>

**Cc:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Eckhardt, Cayleigh <[eckhardt.cayleigh@epa.gov](mailto:eckhardt.cayleigh@epa.gov)>

**Subject:** RE: Telephone Call with NY DOS General Counsel regarding Eastern Long Island Sound Dredged Material Disposal Site (privileged and confidential)

Thank you very much for the update, Mark.

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Please advise of your respective availability next week and, given the possible

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difficulty of scheduling given the intervening Thanksgiving holiday, the following week as well. Thanks.

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Please consider the environment before printing this e-mail.

**From:** Stein, Mark [<mailto:Stein.Mark@epa.gov>]

**Sent:** Friday, November 18, 2016 5:18 PM

**To:** Sweeney, Stephen <[Sweeney.Stephen@epa.gov](mailto:Sweeney.Stephen@epa.gov)>; Levy, Sandra (USANYE) <[SLevy@usa.doj.gov](mailto:SLevy@usa.doj.gov)>; Purdy, Angeline (ENRD) <[Angeline.Purdy@usdoj.gov](mailto:Angeline.Purdy@usdoj.gov)>

**Cc:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Eckhardt, Cayleigh <[eckhardt.cayleigh@epa.gov](mailto:eckhardt.cayleigh@epa.gov)>

**Subject:** Telephone Call with NY DOS General Counsel regarding Eastern Long Island Sound Dredged Material Disposal Site

Hi – I got a call this afternoon from Linda Baldwin, General Counsel of NY DOS (Albany tel.: 518-473-3365; New York tel.: 212-417-5803). She indicated she was calling for several reasons related to EPA’s designation of the Eastern Long Island Sound Dredged Material Disposal Site. First, just to make contact. She indicated that they had read our statement that we had reached out to them to talk but that they had not been aware of that. I indicated that I didn’t know why they didn’t, but that our program folks had reached out to their usual contacts at DOS. They asked why we had called and I indicated that we had been seeking to share our thoughts about how the final action was shaping up before it was finalized and get their thoughts, but they had indicated an unwillingness/inability to talk with us after the Governor’s letter. I explained that

we contacted them more than once, and on one occasion they asked for a legal contact and that our person provided my name and telephone number over the phone and in an email, but no one ever called me. They later indicated that they had thought we might contact them to pursue mediation after we got their objection. Obviously, we didn't think that was in the federal government's interest at that point.

She asked about the Federal Register notice, which they had expected to be published by now. She asked if the delay meant there was time to discuss the action and possibly revise it. I said no. The Rule was signed and it should be published any day now. Our understanding is that it was supposed to have been published late this week, but the FR is a bit behind and we now expect it to be published early next week. I reminded that once published, the Rule is to become effective 30 days later. She asked if any dredging projects were needing to go to the new site this winter. I said that I do not have first-hand information about that, but my it is my understanding that there are no projects scheduled for the next month or two. I don't know beyond that.

She indicated that the Governor's position has not changed and that we would probably be reading about each other's positions in the newspaper. I guess this confirms that they will be filing some type of legal action.

- Mark

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